

THE CHARTER

Chapter C, CHARTER

[HISTORY: Adopted by the Town of Bar Harbor 3-18-1974, effective 1-1-1975; major revision adopted 6-13-1978, effective 1-1-1979; as amended through 1989. Subsequent amendments noted where applicable.]

ARTICLE I, Grants of Power to the Town

§ C-1. Incorporation.

The inhabitants of the Town of Bar Harbor shall continue to be a municipal corporation by the name of the Town of Bar Harbor, pursuant to its incorporation by law and amendments thereof.

§ C-2. Powers.

The Town shall have all the powers possible for a municipality to have under the Constitution and laws of the State of Maine.

§ C-3. Construction.

The powers of the Town under this Charter shall be construed liberally in favor of the Town and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power stated in this article.

§ C-4. Intergovernmental relations.

The Town may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any other municipality of the State of Maine, public agency of this state or of the United States.

ARTICLE II, Town Meetings

§ C-5. Annual and Special Town Meetings. [Amended 11-2-1999; 11-8-2000; 11-7-2006]

Except as otherwise provided by the provisions of this Charter, the legislative authority of the Town of Bar Harbor shall continue to be vested in the inhabitants of the Town of Bar Harbor acting by means of Town Meetings. The Annual Town Meeting shall be held on the first Tuesday in June and the second Tuesday of June.

- A. Open Town Meeting. Such articles of the warrant as the Town Council may choose shall be acted upon on the first Tuesday of June.
- B. Secret ballot. All articles of the warrant with respect to the election of officials, such other articles as the Town Council shall choose and all articles required by law to be on the printed ballot shall be acted upon on the second Tuesday in June.
- C. State law controlling; exceptions. The provisions of the Revised Statutes of the State of Maine, as amended, shall govern the manner in which all Annual and Special Town Meetings shall be called and conducted, except that:
 - (1) Contents of ballots. In addition to the provisions of the Revised Statutes of the State of Maine, the ballots for all Town Meetings shall include:
 - (a) For each ballot article except election of officeholders, the recommendation of the Warrant Committee, including the number of Committee members and the number of Committee members voting for and against the recommendation;
 - (b) For each Land Use Ordinance amendment article, the recommendation of the Planning Board, including the number of Board members and the number of Board members voting for and against the recommendation;
 - (c) For each ballot article affecting school issues, the recommendation of the School Committee, including the number of Committee members and the number of Committee members voting for and against the recommendation;
 - (d) For each ballot article except Land Use Ordinance amendments and election of officeholders, the recommendation of the Town Council, including the number of Councilors and the number of Councilors voting for and against the recommendation.
 - (2) Warrant. The Town Meeting warrant shall be prepared as required by law and be posted in the Municipal Building. Further, the warrant shall include:
 - (a) A brief statement outlining the intent of the proposed article;
 - (b) For each ballot article except election of officeholders, the recommendation of the Warrant Committee, including the number of Committee members and the number of Committee members voting for and against the recommendation;
 - (c) For each Land Use Ordinance amendment article, the recommendation of the Planning Board, including the number of Board members and the number of Board members voting for and against the recommendation;
 - (d) For each ballot article affecting school issues, the recommendation of the School Committee, including the number of Committee members and the number of Committee members voting for and against the recommendation;
 - (e) For each ballot article except Land Use Ordinance amendments and election of officeholders, the recommendation of the Town Council, including the number of Councilors and the number of Councilors voting for and against the recommendation;
 - (f) Such other explanatory material as, in the opinion of the Town Council, would help the voters better understand the issues at hand.

§ C-6. Powers and responsibilities.

- A. The Annual Town Meeting shall have the exclusive power and responsibility to:
 - (1) Elect all necessary Town officers and committees;

- (2) Raise by taxation and appropriate monies so raised.
- B. The Annual and Special Town Meetings shall have the exclusive power and responsibility to:
 - (1) Act on the issuance of bonds and notes, except notes in anticipation of taxes to be paid within the fiscal year in which issued;
 - (2) Appropriate monies except such as are to be raised by taxation;
 - (3) Act on ordinances pertaining to the Town's Land Use Ordinance and on any initiative or referendum questions as provided for by this Charter;
 - (4) Act on the sale of Town-owned real estate other than that acquired through matured tax mortgage liens;
 - (5) Act on any amendments to this Charter pursuant to law;
 - (6) Approve the annual Town budget;
 - (7) Transact other Town business presented to it by warrant articles or required by law.

ARTICLE III, The Town Council

§ C-7. Composition, eligibility, election and terms.

- A. Composition. There shall be a Town Council of seven members elected by the qualified voters of the Town in accordance with Article VIII.
- B. Eligibility. Only persons who are qualified to vote in elections in the Town of Bar Harbor shall be eligible to hold the office of Councilman.
- C. Elections and terms. Each member shall be elected for a term of three years; provided, however, that at the first election after the adoption of this Charter three Councilmen shall be elected and the four incumbent Councilmen presently serving pursuant to the current Charter of the Town of Bar Harbor with more than one year to serve shall be sworn as Councilmen and continue to serve as Councilmen for the remainder of their terms or until their successors are elected and qualified and shall have all the powers, duties and responsibilities of Councilmen as set forth by this Charter.

§ C-8. Salary. [Amended 5-3-1999; 11-6-2001]

Each member of the Town Council shall be paid an annual salary of \$1,500, except the Chairman, whose annual salary shall be \$1,800. Each member's salary shall be paid annually in one lump sum on or about the anniversary date of the date that he/she was sworn into office. In the event that a member vacates his/her office as provided in 30-A M.R.S.A. § 2602(1), as amended, his/her salary shall be prorated based on the number of months that member has held office, to the nearest full month.

§ C-9. Chairman, Vice Chairman and Secretary.

The Council shall elect from among its members a Chairman, a Vice Chairman, and a Secretary, each of whom shall serve at the pleasure of the Council. The Chairman shall preside at meetings of the Council, shall be entitled to vote on all questions and shall be recognized as head of the Town government for all ceremonial purposes but shall have no administrative duties. The Vice Chairman shall act as Chairman during the absence or disability of the Chairman. The Secretary

to the Council shall give notice of Council meetings to its members and to the public in such a manner as deemed suitable and keep a journal of the proceedings of the Council and perform such other duties as are assigned to him by this Charter or by the Council.

§ C-10. General powers and duties.

A. The Council shall have the power to:

- (1) Appoint:
 - (a) The Town Manager for a term not to exceed three years;
 - (b) Town Attorney and an Auditor who shall serve at the will of the Council;
 - (c) The members of the Planning Board, Board of Appeals, and such other boards and committees for such terms of office with such powers and duties as are provided for by this Charter, Town ordinances and state statutes.
- (2) Remove for cause during his or her term of office after hearing any person appointed pursuant to the provisions of this Charter except those persons who serve at the will of the Council.
- (3) By ordinance create, change and abolish offices, departments and agencies, other than offices, departments and agencies established by this Charter. The Council by resolution may assign additional functions or duties to officers, departments or agencies established by this Charter but may not discontinue or assign to any other office, department or agency any function or duty assigned by this Charter to a particular office, department or agency. The Council may, however, vest in the Town Manager all or part of the duties of any office under this Charter, with the exception of that of the Town Clerk, Town Assessor or Town Attorney.
- (4) Convey or authorize the conveyance of real estate acquired by mature tax mortgage liens and the lease or authorization for lease of Town-owned property for a term of not longer than 15 years including any renewal options.
- (5) Adopt an annual budget which shall be presented to the Warrant Committee as provided by this Charter, and cause the detailed budget to be printed in the Town Report; provided, however, that the recommendations and comments of the Warrant Committee shall be printed and made available as required by provisions in § C-36 for distribution prior to Town Meeting.
- (6) Borrow funds and provide for the execution of notes thereof in anticipation of taxes, said notes to be repaid within the fiscal year in which issued.
- (7) Provide for an annual audit.
- (8) Dispose of, by sale or otherwise, surplus Town personal property.
- (9) Make, adopt, alter and repeal ordinances for any purpose permitted by statute with the exception of those pertaining to zoning. In addition to such ordinances, the Council shall have the power to adopt ordinances which:
 - (a) Adopt or amend an administrative code;
 - (b) Provide for a fine or other penalty or establish a rule or regulation, for violation of which a fine or other penalty is imposed;
 - (c) Amend or repeal any ordinance previously adopted;
 - (d) Provide for the compulsory attendance of witnesses, the administering of oaths and the compulsory production of evidence in connection with investigations into the affairs of the Town and the conduct of any Town department (including the School

Department), office or agency or in connection with any hearing provided for by this Charter involving the forfeiture of office of any Councilor, Superintending School Committee member or Warrant Committee member, or the dismissal of any Town employee or member of any Town board. [Amended 11-7-2006]

- (e) Adopt or amend a Code of Ethics, governing all elected and appointed Town officials, including without exception the members of the Town Council, Superintending School Committee and Warrant Committee and their appointees. Any Code of Ethics adopted under this section shall be based on the following principles: that elected officials and their appointees be fair, impartial and responsive to the needs of the people and each other in the performance of their respective functions and duties; that decisions and policy be made in proper channels of the Town's governmental structure; that public office not be used for personal gain; and that members of the Town Council, Superintending School Committee, Warrant Committee and their appointees maintain a standard of conduct that will inspire public confidence in the integrity of the Town's government. Any Code of Ethics adopted under this section shall take precedence over §§ C-53 and C-54 of the Charter, in the event that an interpretational conflict arises in regard to these sections. [Added 11-7-2006]
- (10) Apply for grants and accept such grants provided that no monetary or other obligation, not authorized by Town Meeting, is entailed or required.
- (11) Exercise all other powers of the Town of Bar Harbor not otherwise specifically reserved to the Town Meeting. [Added 5-7-1990]
- B. Notwithstanding the foregoing, nothing contained herein shall diminish the right of the citizens of the Town of Bar Harbor at a Town Meeting to approve or disapprove acts of the Town Council, whether such acts be by ordinance or otherwise.

§ C-11. Prohibitions.

- A. Holding other office. Except where clearly authorized by law, or pursuant to an agreement under the Interlocal Cooperation Agreement Act,^{1EN} no Councilman shall hold any other Town office or Town employment while serving as a member of the Council. This section shall not apply to persons who are employed by the Town on less than a full-time basis.
- B. Appointments and removals. Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any Town administrative officers or employees whom the Town Manager or any of his subordinates is empowered to appoint, but the Council may express its views and fully and freely discuss with the Manager anything pertaining to appointment or removal of such officers or employees.
- C. Interference with administration. Except for the purpose of inquiries and investigations under § C-10A(9), the Council or its members shall deal with Town officers, who are subject to the direction and supervision of the Manager, solely through the Manager. Neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately.

§ C-12. Vacancies; forfeiture of office.

- A. Occurrence of vacancies. The office of Councilman shall become vacant upon his

nonacceptance, resignation, abandonment, death, permanent disability, permanent incompetency, failure to qualify for the office within 10 days after written demand by the Council, forfeiture of office or failure of the municipality to elect a person to the office.

B. Forfeiture of office.

(1) A Councilman shall forfeit his office if he:

- (a) Lacks at any time during his term of office any qualification for the office prescribed by this Charter or by law;
- (b) Violates any express prohibition of this Charter;
- (c) Is convicted of a crime or offense which is reasonably related to his inability to serve as Councilman; or
- (d) Fails to attend three consecutive regular meetings of the Council without being excused by the Council.

(2) Any Councilman deemed to have forfeited his office under this section shall be notified in writing by registered mail by the Council.

C. Filling of vacancies. A vacancy in the Council shall be filled for the remainder of the unexpired term, if any, at the next regular election held more than 60 days after the occurrence of the vacancy. The Council by a majority vote of all of its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office. Notwithstanding the requirement of a quorum in § C-14C, if at any time the membership of the Council is reduced below that requirement, the remaining members may by majority action appoint additional members to raise the membership to the number required; such appointed members shall serve until succeeded by a person duly elected to fill the vacancy.

§ C-13. Judge of qualifications.

The Council shall be the judge of the election and qualification of all officers elected by the voters of this Charter and of the grounds for forfeiture of their office and for that purpose shall have the power to provide for compulsory attendance of witnesses, the administering of oaths, and the compulsory production of evidence. An officer charged in writing with conduct constituting grounds for forfeiture of his office shall be entitled to a public hearing on demand, made within 10 days of receipt of notice of forfeiture. Notice of such hearing shall be published in one or more newspapers of general circulation in the municipality at least one week in advance of the hearing. Decisions made by the Council under this section shall be subject to review by the courts.

§ C-14. Procedure.

- A. Meetings.** The Council shall meet regularly at least once in every month at such time and place as the Council may prescribe by rule. Special meetings may be held on the call of the Council Chairman, Town Manager or three or more members. All meetings shall be public; however, the Council may recess to a closed or executive session for any purpose permitted by law, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the Council except in public meeting.
- B. Rules and journal.** The Council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings by its Secretary. This journal shall be kept

for public record.

C. Voting.

- (1) Voting, except on procedural motions, shall be by roll call and the ayes and nays and abstentions shall be identified and recorded in the journal. Four members of the Council shall constitute a quorum for purposes of conducting an official meeting and transacting municipal business, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Council. Except as otherwise provided in this Charter, the required majority to effectuate the passage, adoption or enactment of an item shall be a simple majority of a quorum.
- (2) Each Councilman in attendance shall vote on all issues and questions presented for vote except when a valid conflict of interest clearly exists. If any Councilman does abstain from a vote other than because of a recognized conflict of interest, he shall be considered to have cast a vote with the majority and the record shall so show.

§ C-15. Ordinances in general.

- A. Form. Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "The Town of Bar Harbor hereby ordains..." Any ordinance which repeals or amends the provisions of an existing ordinance or part of the Town of Bar Harbor Code shall set out in full the ordinance sections or subsections to be repealed or amended and shall indicate matter to be omitted by enclosing it in brackets or by strikeout type and shall indicate new matter by underscoring or by italics. Any ordinance which repeals or amends an existing ordinance in its entirety need not include the provisions of the existing ordinance to be repealed.
- B. Procedure. An ordinance may be introduced by any member at any regular or special meeting of the Council. Upon introduction of any ordinance, the Secretary to the Council shall distribute a copy to each Council member and to the Manager, shall file a reasonable number of copies in the office of the Town Clerk and such other public places as the Council may designate, and shall publish the ordinance together with a notice setting out the time and the place for a public hearing thereon and for its consideration by the Council. The public hearing shall follow the publication by at least seven days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time. All persons interested shall have a reasonable opportunity to be heard. After the hearing the Council may adopt the ordinance with or without amendment or reject it, but, if it is amended as to any matter of substance, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures hereinbefore required in the case of a newly introduced ordinance. As soon as practicable after adoption of any ordinance, the Secretary to the Council shall have it published again together with a notice of its adoption.
- C. Effective date. Except as otherwise provided in this Charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein.
- D. "Publish" defined. As used in this section the term "publish" means to print in one or more newspapers of general circulation in the Town:
 - (1) The ordinance or a brief summary thereof; and

- (2) The places where copies of it have been filed.

§ C-16. Emergency ordinances.

To meet a public emergency affecting life, health, property or the public peace, the Council may adopt one or more emergency ordinances. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least five members shall be required for adoption. After its adoption the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective immediately upon adoption or at such later time as it may specify. Every emergency ordinance shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if the emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

§ C-17. Authentication, recording, codification and printing.

- A. Authentication and recording. All ordinances and resolutions by the Council shall be authenticated by the signature of the Secretary of the Council and recorded in full by the Town Clerk in a properly indexed book kept for the purpose.
- B. Codification. Within three years after adoption of this Charter and at least every 10 years thereafter, the Council shall provide for the preparation of a general codification of all ordinances and resolutions having the force and effect of law. The general codification shall be adopted by the Council by ordinance and shall be printed promptly in bound or loose-leaf form, together with this Charter and any amendments thereto, pertinent provisions of the Constitution and other laws of the State of Maine and such codes of technical regulations and other rules and regulations as the Council may specify. Any codification ordinance may be published by title. This compilation shall be known and cited officially as the "Town of Bar Harbor Code." Copies of the Code shall be furnished to officials, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the Council.
- C. Printing of ordinances and resolutions. The Council shall cause each ordinance and resolution having the force and effect of law and each amendment to this Charter to be printed promptly following its adoption, and the printed ordinances, resolutions and Charter amendments shall be distributed or sold to the public at reasonable prices to be fixed by the Council. Following publication of the first Bar Harbor Code and at all times thereafter, the ordinances, resolutions and Charter amendments shall be printed in substantially the same style as the Code currently in effect and shall be suitable in form for integration therein. The Council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or additions to the provisions of the Constitution and other laws of the State of Maine, or the codes of technical regulations and other rules and regulations included in the Code.

ARTICLE IV, The Town Manager

§ C-18. Appointments; qualifications; compensation.

The Council shall appoint a Town Manager for a term not to exceed three years and shall fix his compensation. The Manager shall be appointed solely on the basis of his executive and administrative qualifications. He need not be a resident of the Town or state at the time of his appointment but may reside outside the Town while in office only with the approval of the Council.

§ C-19. Removal.

The Town Manager may be removed for cause by the Council in accordance with the provisions of the statutes of the State of Maine relating to the removal of a Town Manager.

§ C-20. Acting Town Manager.

The Town Manager may designate subject to Council confirmation a qualified administrative official of the municipality to perform his duties during his temporary absence or disability. In the event of his failure to make such designation, the Town Council may appoint an official of the municipality to perform the duties of the Manager during such absence or disability and until he shall return or his disability shall cease.

§ C-21. Powers and duties of the Town Manager.

The Town Manager shall:

- A. Be the chief executive and administrative official of the municipality;
- B. Be responsible to the Council for the administration of all departments and offices over which the Council has control;
- C. Execute all laws and ordinances of the municipality;
- D. Serve in any office as the head of any departments under the control of the Council when so directed;
- E. Appoint, subject to the confirmation by the Council, supervise, control and remove the heads of departments under the control of the Council when the department is not headed by the Town Manager under Subsection D;
- F. Appoint, supervise, control and remove all other officials, subordinates and assistants, except that the Town Manager may delegate this authority to a head of a department, and report all appointments and removals to the Council;
- G. Act as purchasing agent for all departments, except the School Department, provided that the Town or the Council may require that all purchases greater than a designated amount shall be by sealed bid;
- H. Attend all meetings of the Council, except when his removal is being considered;
- I. Attend such meetings and hearings of the municipality as the Council may require;
- J. Make recommendations to the Council for the more efficient operation of the municipality;
- K. Keep the Council and the residents of the municipality informed as to the financial condition of the Town;

- L. Collect data necessary for and prepare the annual municipal budget and capital improvement budget;
- M. Assist, insofar as possible, residents and taxpayers in discovering their lawful remedies in cases involving complaints of unfair vendor, administrative and governmental practices.

ARTICLE V, Administrative Organization

§ C-22. General administration.

- A. Creation of departments. The Council may establish Town departments, offices or agencies in addition to those created by this Charter and may prescribe the functions of all departments, offices and agencies, except that no function assigned by this Charter to a particular department, office or agency may be discontinued or, unless this Charter specifically so provides, assigned to any other.
- B. Direction by Manager. All departments, offices and agencies under the direction and supervision of the Manager shall be administered by an officer appointed by and subject to the direction and supervision of the Manager. With the consent of the Council, the Manager may serve as head of one or more such departments, offices or agencies or may appoint one person as the head of two or more of them.

§ C-23. Personnel administration.

- A. Merit principle. All appointments and promotions of Town officials and employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence.
- B. Personnel Director. The Manager or a person appointed by him shall be designated Personnel Director. The Personnel Director shall administer the personnel system of the Town.
- C. Personnel rules. The Personnel Director shall prepare personnel rules. When approved by the Manager after consultation with the Superintendent of Schools the rules shall be proposed to the Council for adoption. The Council may adopt them with or without amendment. These rules shall provide for:
 - (1) The classification of all Town positions based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by changed circumstances. For purposes of this section Town positions shall include all Town employees except classroom teachers and school administrators;
 - (2) A pay plan for all Town positions;
 - (3) Methods for determining the merit and fitness of candidates for appointment or promotion;
 - (4) The policies and procedures regulating reduction in force;
 - (5) The policies governing disciplinary measures such as suspension, demotion or discharge, with provisions for presentation of charges, hearing rights and appeals;
 - (6) The hours of work, attendance regulations and provisions for sick and vacation leaves;
 - (7) The policies and procedures governing persons holding provisional or part-time appointments;

- (8) The policies and procedures governing relationships with employee organizations, not inconsistent with law;
- (9) Policies regarding in-service training programs;
- (10) Grievance procedures; and
- (11) Other practices and procedures necessary to the administration of the Town personnel system.

§ C-24. Assessor.

There shall be a single Assessor appointed by the Town Manager. The Assessor shall perform all the duties and responsibilities provided for assessors under general law.

§ C-25. Town Attorney.

There shall be a Town Attorney, appointed by the Council, who shall serve as chief legal adviser to the Council, the Manager and all Town departments, boards, agencies and commissions. The Town Attorney shall represent the Town in all legal proceedings and shall perform any other duties prescribed by ordinance and law. In any matter where there may be a conflict between the Town Council and any other Town officer, department, board, agency or commission, the Town Attorney shall represent the Town Council only.

§ C-26. Superintending School Committee.

- A. Composition. There shall be a Superintending School Committee, sometimes referred to herein as "School Committee," of five members elected by the qualified voters of the Town in accordance with Article VIII.
- B. Eligibility. Only persons who are qualified to vote in elections in the Town of Bar Harbor shall be eligible to hold the office of School Committeeman. Except where clearly authorized by law, or pursuant to an agreement under the Interlocal Cooperation Act,^{iiEN} no School Committeeman shall hold any other Town office or Town employment while serving as a School Committeeman. This provision shall not apply to persons who are employed by the Town on less than a full-time annual basis.
- C. Election and terms. Each member shall be elected for a term of three years; provided, however, that at the first election after the adoption of this Charter three School Committee members shall be elected and two Committeemen presently serving pursuant to the current Charter of the Town of Bar Harbor with more than one year to serve shall be sworn as Committeemen and continue to serve as Committeemen for the remainder of their terms or until their successors are elected and qualified.
- D. Compensation. Each member of the School Committee shall be paid an annual salary of \$400, except the Chairman, whose annual salary shall be \$500. Each member's salary shall be paid annually in one lump sum on or about the anniversary date of the date that he/she was sworn into office. In the event that a member vacates his/her office as provided in 20-A M.R.S.A. § 2305(4), as amended, his/her salary shall be prorated based on the number of months that member has held office, to the nearest full month. [Amended 5-3-1999]
- E. Powers and duties. The School Committee shall:
 - (1) Have all the powers and duties prescribed for Superintending School Committees by the

- general laws of the State of Maine and as provided by this Charter consistent with said laws;
- (2) Have the authority for and in behalf of the Town of Bar Harbor to sell and lease personal property and to lease real estate under its authority and control; and
 - (3) At least 15 days prior to the first day of January of each calendar year, submit to the Town Manager a detailed budget for the next school year.
- F. Chairman, Vice Chairman and Secretary. At the first meeting annually, the School Committee shall elect by majority vote from among its members a Chairman, a Vice Chairman and a Secretary for the ensuing year. The Chairman shall preside at all meetings of the School Committee and shall have a vote as other members of said Committee. The Vice Chairman shall act as Chairman during the absence or disability of the Chairman. The Secretary to the Committee shall give notice of School Committee meetings to its members and to the public in such a manner as deemed suitable by the Committee and keep a journal of the proceedings of the School Committee and perform such other duties as are assigned to him by this Charter or by the School Committee.
- G. Procedure.
- (1) Meetings. The School Committee shall meet regularly at least once in every month at such time and place as the School Committee may prescribe by rule. Special meetings may be held on the call of the Chairman, Superintendent of Schools or of any two or more Committee members by causing a notification to be given in hand or left at the usual dwelling place of each Committee member. All meetings shall be public; however, the Committee may recess to a closed or executive session for any purpose permitted by law, provided that the general subject matter for consideration is expressed in the motion calling for such session and that final action thereon shall not be taken by the Committee except in public meeting.
 - (2) Rules and journal. The Committee shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be kept for public record.
 - (3) Voting.
 - (a) Voting, except on procedural motion, shall be by roll call and the ayes, nays and abstentions shall be identified and recorded in the journal. Three members of the Committee shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Committee.
 - (b) Each Committeeman shall vote on all issues and questions presented for vote except when a valid conflict of interest clearly exists. If any Committeeman does abstain from a vote other than because of a recognized conflict of interest, he shall be considered to have cast a vote with the majority and the record shall so show.

ARTICLE VI, Financial Procedures [Added 5-7-1991]

§ C-27. Fiscal year.

The fiscal year of the Town government shall begin the first day of July and end on the 30th day

of June in the following year, or such other fiscal year as the Council may decide. Such fiscal year shall constitute the budget and accounting year as used in this Charter.

§ C-28. Budget divisions.

The budget shall have two divisions, the municipal budget and the education budget. Each shall include all proposed expenditures thereunder, except for reserve funds and state and federal grants. For the ensuing fiscal year, Town Meeting shall make a single appropriation for each of said budgets, with separate articles for each. The capital improvement program shall be included within the municipal budget.

§ C-29. Operating budget.

The operating budget shall be defined as the entire budget of the Town, exclusive of the capital improvement program, and shall contain the following:

- A. Introduction. The Town Manager's budget message, along with a summary of the budget prepared in such manner as to present to the taxpayers a simple and clear synopsis of the detailed estimates of the budget. It need not be itemized further than by principal sources of anticipated revenue, stating separately the amount to be raised by property taxes, and shall also contain itemized expenditures by department;
- B. Revenues. A statement of taxes required, an itemized statement of estimated revenue from all other sources, and comparative figures from the current and previous year;
- C. Expenditures. An itemized statement of appropriations recommended for the coming year with comparative statements in parallel columns of estimated expenditures for the current year and actual expenditures for the previous fiscal year (an unusual increase or decrease in any item shall be indicated and explained);
- D. Other. Such other information as may be required by the Town Council.

§ C-30. Capital improvement program.

- A. The capital improvement program (CIP) shall be defined as a program consisting of expenditures, any one of which costs more than \$5,000 and meets one or more of the following requirements:
 - (1) Construction time extends to two or more fiscal years;
 - (2) Includes planning for, construction of or major renovation of a Town building, wharf, public way, sewer, drain or appurtenant equipment; or
 - (3) Replacement or acquisition of equipment with a life expectancy of five years or longer.
- B. CIP purpose. The purpose of the CIP is to plan the Town's capital investment needs over the ensuing five-year period. The Town should seek to avoid financing costs by setting aside funds in advance of their need, except for major capital items with life expectancies in excess of 10 years.
- C. CIP contents. The capital improvement program shall include:
 - (1) A clear summary of its contents;
 - (2) A list of all capital improvements which are proposed during the five next fiscal years, with proper supporting information as to the necessities for such improvements;
 - (3) Cost estimates, methods of financing and recommended time schedules of such improvements;

- (4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired, if any.
- D. CIP revision. The above information shall be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition. The current year's portion of the five-year capital improvement budget as approved by the Council shall be included as an item within the municipal budget presented to the Warrant Committee and to each Annual Town Meeting. The capital improvement program shall be printed in the Town's Annual Report.
- E. CIP appropriations. CIP appropriations approved by the Town shall be continuing appropriations which do not lapse at the end of the fiscal year but continue into the next fiscal year.

§ C-31. Preparation and submission of the budget.

The budget shall be prepared and submitted according to the following procedure:

- A. Departmental CIP requests. Fifty-six days before the Town Manager is required to submit the budget to the Town Council, all department heads and board or committee chairs, except for the School Committee, shall submit their CIP funding requests to the Town Manager. Said requests shall include the information required in § C-30C(2) through (4).
- B. Departmental operating budget requests. Forty-two days before the Town Manager is required to submit the budget to the Town Council, the department heads, board or committee chairs, except for the School Committee and cooperating agencies shall submit their budget requests to the Town Manager. Said requests shall include the information required in § C-29B through D.
- C. School Committee budget request. Fourteen days before the Town Manager is required to submit the budget to the Town Council, the School Committee shall submit its operating budget and CIP funding requests to the Town Manager. Said requests shall include the information required in § C-30C(2) through (4), as well as § C-29B through D.
- D. Submittal of budget to Council. The Town Manager shall compile the budget information submitted, prepare the budget as provided in this section, and submit the operating budget and CIP to the Town Council on or before the third Tuesday in January each year.
- E. Tentative adoption of budget by Council. The proposed budget prepared by the Manager shall be reviewed by the Town Council which shall tentatively adopt the budget with or without amendments on or before the seventh day of February of each calendar year and fix a time and a place for holding a public hearing on the budget prior to the 22nd day of February of each calendar year.
- F. Notice of hearing. The Town Clerk shall give public notice of such hearing in a newspaper of general circulation in the Town. Said notice shall contain as a minimum the date, time and place of the meeting, the locations where copies of the budget may be reviewed, the total appropriations requested for both the municipal and school budgets and an estimate of the affect on the tax rate. Full copies of the detailed budget shall be made available for public review at the office of the Town Clerk and the Jesup Memorial Library.
- G. Adoption of budget by Council. The Town Council shall hear public comment at the budget hearing, review the budget, adopt it with or without change and recommend it to the Warrant Committee on or before February 22.
- H. Submittal to Warrant Committee. No later than seven days following the date of adoption,

the Town Manager shall submit to the Town Warrant Committee the complete detailed budget as adopted by the Town Council.

- I. Warrant Committee review. The Town Warrant Committee shall review the budget and submit its recommendations to the Council at least four weeks prior to Town Meeting. The Council shall review the recommendations as submitted by the Warrant Committee and submit the budget to Town Meeting with or without changes. The recommendations of the Warrant Committee pertaining to the municipal and school budgets shall be provided as a commentary to the Town Meeting.

§ C-32. Transfer of appropriations.

The Town Manager and department heads may transfer any unencumbered appropriation balance or portion thereof from line item to line item within cost centers but may not expend funds in excess of the cost center appropriation. The Council may, by resolution, transfer any unencumbered appropriation balance or portion thereof between cost centers.

§ C-33. Definitions.

The accounting terms used herein shall be interpreted as defined in the latest edition of Governmental Accounting, Auditing and Financial Reporting published by the Government Finance Officers Association.

ARTICLE VII, Warrant Committee [Amended 11-2-2004; 11-6-2007]

§ C-34. Nomination and election.

- A. At least 75 days prior to each Annual Town Meeting, the person who held the office of Moderator at the most recent Annual Town Meeting (hereinafter referred to as the "Retired Moderator") shall call and chair a meeting or meetings to select 22 voters to be nominated for election by the Annual Town Meeting to serve as Warrant Committee members.
- B. The Nominating Committee shall be composed of five members: said Retired Moderator, the Chair and Secretary of the Warrant Committee and two other registered voters to be appointed by the Retired Moderator. The Chair of the Nominating Committee may vote on motions coming before the Committee only in the event of a tie.
- C. Should the Retired Moderator or Warrant Committee Chair or Secretary be unable, refuse or fail to fulfill their duties as provided above, the Town Clerk shall appoint a registered voter to fill their seat.
- D. The Nominating Committee shall report the names of its intended nominees to the Town Clerk for inclusion in the Annual Town Report at least 60 days prior to the Annual Town Meeting.
- E. At each Annual Town Meeting, a member of the Nominating Committee shall nominate the 22 voters selected pursuant to this section to serve as the Warrant Committee for the ensuing year. The Town Meeting shall thereupon proceed with the election of the Warrant Committee.

§ C-35. Organization.

The Warrant Committee, upon the call of the Town Clerk, shall meet and organize with the election of a Chair, a Vice Chair and a Secretary within three weeks of its election. It shall have the power to fill vacancies in its number by vote of its members and shall establish its own rules of procedure and bylaws.

§ C-36. Duties and responsibilities.

- A. It shall be the duty of any duly elected Warrant Committee to consider, investigate and report upon with recommendations or comments all articles except those dealing with elections in the warrant of all Town Meetings, whether annual or special. When requested to do so, it shall be the duty of Town officers and committees to meet with the Warrant Committee or any of its subcommittees and to furnish all information relative to matters being considered by said Committee or subcommittee.
- B. The Warrant Committee shall submit its recommendations on budget articles to the Town Council as provided by Charter § C-31, Preparation and submission of the budget.
- C. No later than 60 days prior to each Annual or one week prior to each Special Town Meeting, the report of the Warrant Committee shall be submitted to the Town Clerk, who shall have it printed and made available for distribution to the voters. The report of the Warrant Committee shall be with respect to all articles submitted to it and shall include its recommendations with respect to each article and contain any commentary which the Warrant Committee elects to have included in said report.

§ C-37. Meetings public.

All meetings of the Warrant Committee and its subcommittees shall be open to the public and notice thereof posted on the Town Office Bulletin Board no less than two days prior thereto.

§ C-38. Compliance.

The failure of the Warrant Committee to comply with any of the provisions of this article shall not be deemed to render invalid any action taken by the voters of the Town of Bar Harbor at any Annual or Special Town Meeting.

ARTICLE VIII, Elections and Nominations

§ C-39. Elections.

- A. Conduct of elections. The regular municipal election shall be held on the second Tuesday of June. Except as otherwise provided for by this Charter, the provisions of the Revised Statutes of the State of Maine, as amended, shall govern elections of all Town officials required by this Charter, except the Moderator and the members of the Warrant Committee, and said elections shall be conducted by the election officials accordingly. [Amended 11-7-2006]
- B. Qualified voter. The term "qualified voter" as used in this Charter shall mean any person

qualified and registered to vote in the Town of Bar Harbor pursuant to the laws of the State of Maine.

§ C-40. Nominations.

A. Petitions.

- (1) Candidates for election to the Council and the School Committee shall be nominated by petition. Any person who is qualified to vote in elections in the Town of Bar Harbor may be nominated for election as a Councilman or School Committeeman by a petition signed by not less than the number of qualified voters of the Town that is required by state law.
- (2) No voters shall sign more than one petition for each office to be filled and, should a voter do so, his signature shall be void.

B. Filing and acceptance of nomination petitions. All separate papers comprising a nominating petition shall be assembled and filed with the Town Clerk as one instrument on or before the 45th day next prior to the day of election. The Clerk shall make a record of the exact time when each petition is filed. No nominating petition shall be accepted unless accompanied by a signed acceptance of the nomination. [Amended 11-2-1999]

C. Procedure after filing nominating petitions. Within five days after the filing of a nominating petition, the Clerk shall notify the candidate and the person who filed the petition whether or not it satisfies the requirements prescribed by this Charter. If a petition is found insufficient, the Clerk shall return it immediately to the person who filed it with a statement certifying wherein it is found insufficient. Within the regular time for filing petitions such a petition may be amended and filed again as a new petition or a different petition may be filed for the same candidate. The Clerk shall keep on file all petitions found sufficient as required by state law.

§ C-41. Voting machines.

The Council may provide for the use of mechanical or other devices for voting or counting the votes not inconsistent with the law.

§ C-42. Moderator.

Whenever the election of a Moderator is required at any Annual or Special Town Meeting, the provisions of the Maine Revised Statutes, as amended, shall govern.

ARTICLE IX, Initiative and Referendum

§ C-43. General authority.

- A. Initiative.** Qualified voters shall have power to propose ordinances to the Council. If the Council fails to adopt an ordinance so proposed without any change in substance, the voters may vote to adopt or reject it at an election, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes

or salaries of officers or employees.

- B. Referendum. The qualified voters of the Town shall have power to require reconsideration by the Council of any adopted ordinance and if the Council fails to repeal an ordinance so reconsidered said voters shall have the power to approve or reject it at a Town election, provided that such power shall not extend to the budget or capital program or any emergency ordinance or ordinance relating to appropriation of money, levy of taxes, or salaries of officers or employees.

§ C-44. Commencement of proceedings; petitioners' committee; affidavit.

Any five qualified voters may commence initiative or referendum proceedings by filing with the Clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the mailing address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. Promptly after the affidavit of the petitioners' committee is filed, the Clerk shall issue the appropriate petition blanks to the petitioners' committee.

§ C-45. Petitions.

- A. Number of signatures. Initiative and referendum petitions must be signed by qualified voters of the Town equal in number to at least 10% of the total municipal vote for Governor cast in the last gubernatorial election preceding the filing of the petition as certified by the Town Clerk. [Amended 11-2-1999]
- B. Form and content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
- C. Affidavit of circulator. Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he personally circulated the paper, the number of signatures thereon, that all of the signatures were affixed in his presence, that he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
- D. Time for filing referendum petitions. Referendum petitions must be filed within 30 days after adoption by the Council of the ordinance sought to be reconsidered.

§ C-46. Procedure after filing.

- A. Certificate of Clerk; amendment. Within 20 days after the petition is filed, the Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioners' committee files a notice of intention to amend it with the Clerk within five days after receiving the copy of his certificate and files a supplementary petition upon additional papers within 10 days after receiving the

copy of such certificate. Such supplementary petition shall comply with the requirements of § C-45B and C and, within five days after it is filed, the Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioners' committee by registered mail as in the case of an original petition. If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Council review under Subsection B within the time required, the Clerk shall promptly present his certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition.

- B. Council review. If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within five days after receiving copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition.
- C. Court review; new petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

§ C-47. Referendum petitions; suspension of effect of ordinance.

When a referendum petition is filed with the Town Clerk, the ordinance to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- A. There is a final determination of insufficiency of the petition; or
- B. The petitioners' committee withdraws the petition; or
- C. The Council repeals the ordinance.

§ C-48. Action on petitions.

- A. Action by Council. When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within 60 days or fails to repeal the referred ordinance within 30 days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters.
- B. Submission to voters.
 - (1) The vote on a proposed or referred ordinance shall be held not less than 45 days and not later than one year from the date of the final Council vote thereon. If no regular Town election is to be held within the period prescribed in this subsection, the Council shall provide for a special election; otherwise, the vote shall be held at the same time as the regular election, except that the Council may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls. [Amended 11-2-1999]
 - (2) An ordinance to be voted on shall be presented for voting by ballot title. The ballot title of a measure may differ from its legal title but shall be a clear, concise statement describing the substance of the measure without argument or prejudice. Below the ballot

title shall appear the following question in the case of an initiative: "Shall the above-described ordinance be adopted?" In the case of a referendum the question shall be: "Shall the above-described ordinance be repealed?" Immediately below such question shall appear in the following order the words "yes" and "no" and to the left of each a square in which the voter may cast his vote.

§ C-49. Results of election.

- A. Initiative. If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council.
- B. Referendum. If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

ARTICLE X, General Provisions

§ C-50. Elected officers; term.

The term of any elected officer shall begin the first day following election of said officer. Any officer shall serve for his prescribed term or until his successor is elected and qualified.

§ C-51. Swearing in officers.

Every Town officer or official shall be sworn to the faithful discharge of the duties incumbent upon him according to the Constitution and laws of the State of Maine and the Charter and ordinances of the Town and shall be sworn to support the Constitution of the United States and the Constitution of the State of Maine.

§ C-52. Organizational meetings.

The Town Council and the Superintending School Committee shall each convene within two days following the annual election for purposes of organizing as provided by statute and this Charter.

§ C-53. Personal financial interest.

Any officer or employee who has a substantial financial interest, direct or indirect, in any contract with the Town or in the sale of any land, material, supplies or services to the Town or to a contractor supplying the Town shall make known that interest and shall refrain from voting upon or otherwise participating in his capacity as an officer or employee in making of such sale or in the making or performance of such contract. Any officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his office or position. Violation of this section with the knowledge express or implied of the person or corporation

contracting with or making a sale to the Town shall render the contract or sale voidable by the Council.

§ C-54. Prohibitions.

A. Activities prohibited.

- (1) No persons shall be appointed to or removed from or in any way favored or discriminated against with respect to any Town position or appointive Town administrative office because of race, age, sex, marital status, political or religious opinions or affiliations or national origin.
- (2) No person who holds a compensated appointive Town position shall solicit any assessments, contributions, or services for any political party from any employee in the municipal service.

B. Penalties. Any person found in violation of this section or any ordinance enacted pursuant to this section by a court of competent jurisdiction or by the Council acting in a judicial capacity shall be ineligible for a period of five years thereafter to hold any Town office or employment and shall immediately forfeit his office or position.

§ C-55. Separability.

If any provision of this Charter is held invalid, the other provisions of the Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstance is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby. If any provision of this Charter is held invalid by reason of any conflict with state or federal law, the provisions of the applicable state or federal law shall automatically become incorporated in this Charter in place of the invalid Charter provision.

ARTICLE XI, Transitional Provisions

§ C-56. Time of taking full effect - Charter.

This Charter shall be in full effect for all purposes on and after the first day of the next succeeding municipal year after adoption. As used in this Charter, "municipal year" is defined as being from July 1 to June 30.

§ C-57. Incumbent Council.

As of the effective date of this Charter the five Councilmen incumbent as of said effective date shall continue as interim Councilmen under this Charter until the next regular municipal election at which time Councilmen will be elected as provided for by § C-7C. During said interim period three shall be considered a majority of the Council.

§ C-58. Staggering of terms - Council.

- A. Those Councilors incumbent as of the effective date of this Charter shall continue as Councilors until the expiration of their terms as established by the Charter in effect at the time of their election.
- B. Three new Councilors shall be elected at the first regular municipal election following the effective date of this Charter to serve for three years in accordance with § C-7C.

§ C-59. Incumbent Superintending School Committee.

As of the effective date of this Charter the three School Committeemen incumbent as of said effective date shall continue as interim School Committeemen under this Charter until the next regular municipal election at which time School Committeemen will be elected as provided for by § C-26C. During said interim period two shall be considered a majority of the School Committee.

§ C-60. Staggering of terms - School Committee.

- A. Those School Committeemen incumbent as of the effective date of this Charter shall continue as School Committeemen until the expiration of their terms as established by the Charter in effect at the time of their election.
- B. At the first regular municipal election following the effective date of this Charter two Committeemen shall be elected for three-year terms and one shall be elected for a two-year term in accordance with § C-26C.

§ C-61. Officers and employees.

- A. Rights and privileges preserved. Nothing in this Charter, except as otherwise specifically provided, shall affect or impair the rights or privileges of persons who are Town officers or employees at the time of its adoption.
- B. Continuance of office or employment. Except as specifically provided by this Charter, if at the time this Charter takes full effect a Town administrative officer or employee holds any office or position which is or can be abolished by or under the authority of this Charter, he shall continue in such office or position until the taking effect of some specific provision under this Charter directing that he vacate the office or position.
- C. Competitive testing. An employee holding a Town position at the time the personnel policies required by this Charter take effect shall not be subject to competitive tests as a condition of continuance in the same position but in all other respects shall be subject to the rules and procedures provided for by the personnel policies.

§ C-62. Pending matters.

All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the Town department, office or agency appropriate under this Charter.

§ C-63. State and municipal laws.

All Town ordinances, resolutions, orders and regulations which are in force when this Charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this Charter or of ordinances or resolutions adopted pursuant thereto. To the extent that the Constitution and laws of the State of Maine permit, all laws relating to or affecting this Town or its agencies, officers or employees which are in force when this Charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this Charter or of ordinances or resolutions adopted pursuant thereto.

ⁱ Editor's Note: See 30-A M.R.S.A. § 2201 et seq.

ⁱⁱ Editor's Note: See 30-A M.R.S.A. § 2201 et seq.